

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
IVAN ANTONYUK; GUN OWNERS OF AMERICA, INC.;
GUN OWNERS FOUNDATION; and GUN OWNERS OF
AMERICA NEW YORK, INC.,

Plaintiffs.

vs.

1:22-CV-734

KEVIN P. BRUEN, in his Official Capacity as
Superintendent of the New York State Police,

Defendant.

-----X
Transcript of a Motion Hearing held on
August 23, 2022, at the James Hanley Federal
Building, 100 South Clinton Street, Syracuse,
New York, the HONORABLE GLENN T. SUDDABY, Chief
Judge, Presiding.

A P P E A R A N C E S

For Plaintiffs: STAMBOULIEH LAW, PLLC
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BY: STEPHEN D. STAMBOULIEH, ESQ.

For Defendant: STATE OF NEW YORK
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New York, New York 10005
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STATE OF NEW YORK
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BY: MICHAEL G. McCARTIN, ESQ.

I N D E X O F T E S T I M O N Y

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Erich Pratt	5	6	13	--
William Robinson	14	15	22	--
Ivan Antonyuk	23	24	--	--

1 (Open Court, 10:38 a.m..)

2 THE CLERK: Case is Ivan Antonyuk Gun Owners of
3 America, Inc., Gun Owners Foundation and Gun Owners of
4 America New York Inc. versus Kevin Bruen, 22-CV-734, Counsel,
5 please note your appearances for the record.

6 MR. STAMBOULIEH: Stephen Stamboulieh for the
7 plaintiffs.

8 MR. THOMPSON: Good morning, your Honor, James
9 Thompson from the Attorney General's office for defendant
10 Bruen.

11 MR. MCCARTIN: Good morning, your Honor, Michael
12 McCartin with the Attorney General's office for defendant
13 Bruen as well.

14 THE COURT: Okay. Good morning. We're here for a
15 hearing this morning on the motion for preliminary injunction
16 and we're going to -- we'll start with witnesses, then I'll
17 give both parties an opportunity to make their arguments,
18 certainly your arguments may be affected by some of the
19 testimony that's elicited so we'll wait to hear any argument
20 at the end, I think that makes the most sense. I'll give
21 each of you an opportunity to present your arguments and then
22 give a reply, so that you feel like you had an opportunity to
23 cover everything, obviously an opportunity to respond to your
24 opposing counsel. Okay?

25 So I think it makes the most sense, because our

1 technology has been a little iffy lately, technology's great
2 when it works, and so far we've got it working so this
3 witness that had travel issues and can't be here today, we're
4 going to do remotely so why don't we call that witness first
5 and so that it can be addressed quickly and while we know
6 it's working and then we'll go from there, okay?

7 MR. STAMBOULIEH: Yes, sir.

8 THE COURT: Okay. Go ahead, sir.

9 MR. STAMBOULIEH: The plaintiffs will call Erich
10 Pratt, your Honor.

11 THE COURT: Okay.

12 MR. STAMBOULIEH: And your Honor, if it pleases the
13 court, my understanding of your order was that we would
14 submit supplemental affidavits and then subject the witnesses
15 to cross-examination, so would the court like me to just
16 authenticate he filed an affidavit and then have the state
17 cross-examine him?

18 THE COURT: Yeah, I mean I'm sure they'll
19 cross-examine him based on the affidavit that's been
20 submitted and whatever testimony you offer, so that's pretty
21 standard.

22 MR. STAMBOULIEH: Yes, sir, thank you.

23 THE COURT: No issues, all right?

24 MR. STAMBOULIEH: Thank you.

25 THE COURT: So we'll swear him in.

Erich Pratt - Direct

5

1 THE CLERK: Mr. Pratt, can you please raise your
2 right hand.

3

4 E R I C H P R A T T , called as a
5 witness and being duly sworn, testifies as follows:

6 MR. STAMBOULIEH: May I proceed?

7 THE COURT: You may, sir.

8 DIRECT EXAMINATION BY MR. STAMBOULIEH:

9 Q Mr. Pratt, would you state your name for the record,
10 please?

11 A My name is Erich Pratt, and I'm the senior vice
12 president of Gun Owners of America.

13 Q Mr. Pratt, did you execute an affidavit yesterday for
14 filing in response to the opposition to the motion for
15 preliminary injunction?

16 A Yes, I did.

17 Q And you signed that affidavit yesterday. I don't have
18 a copy of it to show you.

19 A Yes, I did.

20 Q Right. I'm just going to -- can't see anything. Okay.
21 Your signature, it's Erich Pratt, correct, August 22nd, 2022?

22 A That's correct.

23 MR. STAMBOULIEH: All right. Your Honor, we'll
24 rest on the declaration, I'll let my friends here cross.

25 THE COURT: Okay.

Erich Pratt - Direct

6

1 MR. McCARTIN: Thank you, your Honor.

2 THE COURT: When you're ready, sir, go ahead.

3 CROSS-EXAMINATION BY MR. McCARTIN:

4 Q Sir, good morning, my name's Michael McCartin, I
5 represent Superintendent Bruen in this litigation. Your
6 organization, Gun Owners of America, is a 501(c)(4)
7 organization, is that correct?

8 A For Gun Owners of America, yes; we also have a
9 foundation as well.

10 Q And what is the foundation as far as, it's not a
11 501(c)(4), right?

12 A That's correct, it's a 501(c)(3).

13 Q Now, as far as Gun Owners of America being a 501(c)(4),
14 that means your organization is an advocacy group, it lobbies
15 as part of its main core mission, is that correct?

16 A That's correct.

17 Q And your whole purpose in being a political and
18 lobbying organization is to listen to your members and
19 advocate on their behalf to legislatures and courts for the
20 interest of the members, is that fair to say?

21 A We do do that, and I would say organizationally, we
22 heard from an incredibly big number, large number of our
23 members on this way beyond anything that I can remember in
24 recent years, so we actually had to pull resources from what
25 we were currently doing --

Erich Pratt - Direct

7

1 Q Sir, if I could ask you just to answer my questions
2 before you get into that. Okay?

3 A Sure.

4 Q All right. Now, on page 1 of your website or a page of
5 your website for Gun Owners of America states, "Over the last
6 30 years, Gun Owners of America has built a nationwide
7 network of attorneys to help fight court battles in almost
8 every state in the nation to protect gun owners' rights," is
9 that correct?

10 A That's correct.

11 Q Now, last year your contributions were over \$6 million,
12 is that fair to say?

13 A I don't have that information in front of me, but -- so
14 I can't, with, you know, willfully knowing what the number
15 is, but it's certainly in the millions.

16 Q Now, you began to discuss the phone calls that you
17 received. Is it correct that your organization Gun Owners of
18 America received 28 telephone calls and e-mails in regard to
19 the new legislation that we're addressing here today?

20 A That's correct.

21 Q How many phone calls on an average day would you
22 normally have prior to July 1st of 2022?

23 A On any particular issue, you'd be able to count phone
24 calls that we would get on one hand.

25 Q And who answers the phones at your organization?

Erich Pratt - Direct

8

1 A We have several people who do.

2 Q And who are they?

3 A You're looking for names?

4 Q Yes.

5 A So we have Nico Gonzalez, we have Megan Browning who
6 is -- heads up the team, and I can get you other names as
7 well.

8 Q As a result of the passage of the CCIA, did you receive
9 an increase in the amount of e-mails or snail mail that you
10 received?

11 A Yes, we certainly did, far exceeding anything that I
12 can remember in recent years.

13 Q Now when you say 28 calls and e-mails, is that combined
14 or individually?

15 A Could you clarify?

16 Q Sure, I'm looking at paragraph 6 of your declaration
17 and you indicate, "Relative to this issue, we received
18 approximately 28 calls and e-mails." Is that 28 combined
19 calls and e-mails?

20 A I guess I don't see -- I don't understand the
21 distinction between combined versus individually.

22 Q Well, did you receive --

23 A There were 28 different people if that's what you mean.

24 Q 28 different people contacted you?

25 A Yes.

Erich Pratt - Direct

9

1 Q Okay. Now, during the normal course of the day, prior
2 to July 1st of 2022, how many e-mails would your organization
3 generally get?

4 A Um, it really depends on what's happening but I would
5 say -- honestly I'd probably have to defer to Megan and get a
6 statement from her because that's not something that I'm day
7 to day at all tracking.

8 Q So you don't --

9 A But I'm guessing, I have in the past I will say -- I'm
10 not currently but in the past when I was more operationally
11 looking at that, I would say it would be like a dozen to 15 a
12 day.

13 Q Dozen to 15 a day. And in total, you received 28 calls
14 and e-mails relative to this particular legislation?

15 A That's correct. Right. And just for clarification,
16 the 12 to 15 of course would be, I mean, that could be, you
17 know, membership question, something like that, these aren't
18 necessarily people who are calling on an issue.

19 Q Sir, did members of your organization contact you at an
20 increased pace as a result of the Supreme Court's *Bruen*
21 decision that was issued on June 23rd, 2022?

22 A Yes, it was certainly concentrated around the time of
23 the passage.

24 Q Between the time period of June 23rd, 2022 and
25 June 30th, 2022, how many phone calls and correspondence did

Erich Pratt - Direct

10

1 you receive in that one-week period?

2 A I don't have that information in front of me but that's
3 something that I can get.

4 Q Did you continue to receive phone calls as a result of
5 the legislation in question being signed into law on July 1st
6 of 2022?

7 A I don't know when, what day it began, what day the
8 calls and contacts began.

9 Q Your lawsuit in this case began on July 11, 2022,
10 correct?

11 A I'm assuming so, I don't have the document in front of
12 me.

13 Q Assuming that's correct?

14 A Sorry.

15 Q Assuming that's correct, sir?

16 A Okay.

17 Q Between the 1st of July and the 11th of July, how many
18 of the phone calls of the 28 phone calls and the e-mails did
19 you receive in that 11-day period?

20 A Again, I don't have that information as to when the
21 calls came, you know, on which days they came, I only know
22 the total numbers.

23 Q How many more members did your organization obtain
24 since July 1st of 2022?

25 A Again, that's not information that I have, but

Erich Pratt - Direct

11

1 certainly information that I can get.

2 Q Can you give me an estimate of how many more members
3 you obtained as a result of the act being passed?

4 A As we're -- as I'm sitting here, I cannot, because
5 again, that's, you know, I'm one who deals with the media and
6 so, you know, we have a lot of division of labor, that's just
7 not something I deal with on a day-to-day basis.

8 Q How much more in donations did you receive between
9 July 1st, 2022, and this date?

10 A Again, I don't have that information, I can get it. I
11 can tell you how our media kicked up because that is what I
12 deal with, and we were slammed with media and had several
13 staffers having to handle media requests, so that I can say
14 definitely took an uptick.

15 Q Is it possible that your membership and contributions
16 took an uptick as well so you have a financial net benefit as
17 a result of the act being passed?

18 A I can only speculate that's something that I can --
19 again, that's information we can certainly get for you.

20 Q But you don't have it here today?

21 A Nope, sorry, I don't.

22 Q So you don't know if the act has been a financial boon
23 to your organization as opposed to a detriment?

24 A Again, that's information that, you know, I'll have to
25 check with our financial officer to find out what's been the

1 uptick in New York.

2 Q Sir, you mentioned in your declaration that you had a
3 concern about a gun show in Hamburg, New York, is that
4 correct?

5 A That's correct.

6 Q Has that gun show been canceled to your knowledge?

7 A To my knowledge, no, although I believe that they are
8 very concerned about whether they can have it, so our
9 understanding is that it might be.

10 Q It might be but you don't know if it has?

11 A I don't know for sure, no.

12 Q Has that gun show been threatened to be canceled by the
13 New York State Police, to your knowledge?

14 A I don't personally have that information.

15 Q Do you know if any members of either the Gun Owners of
16 America or the Gun Foundation of America are former members
17 of the New York State Police?

18 A I personally don't have knowledge of that.

19 Q Other than through this lawsuit, has your organization
20 had any contact with the New York State Police about the
21 CCIA?

22 A Not that I know of.

23 Q Has the New York State Police threatened you or your
24 organization with any consequences related to a violation of
25 the CCIA?

Erich Pratt - Redirect

13

1 A Not that I've been made aware of.

2 MR. McCARTIN: Thank you, sir. Your Honor, I have
3 no other questions at this time, thank you.

4 THE COURT: Any redirect?

5 MR. STAMBOULIEH: Just a brief redirect, your
6 Honor.

7 THE COURT: Go ahead, sir.

8 REDIRECT EXAMINATION BY MR. STAMBOULIEH:

9 Q Mr. Pratt, you heard my friend's questions about
10 whether or not the act was a financial boon to Gun Owners of
11 America and Gun Owners Foundation, do you recall that
12 question?

13 A I do.

14 Q Do you pay your attorneys, Mr. Pratt?

15 A Yes, we do.

16 Q Do you anticipate making more money in donations than
17 what you're going to pay me to litigate this case?

18 A It has never been our experience that the contributions
19 coming in related to a case pay for the expenses of our
20 attorneys.

21 MR. STAMBOULIEH: Okay. Thank you so much. Thank
22 you, your Honor.

23 THE COURT: Okay. Any followup --

24 MR. McCARTIN: I would just note, your Honor, that
25 attorneys' fees aren't able to establish standing. Other

William Robinson - Direct

14

1 than that, I'll rest on this.

2 THE COURT: Okay. Is that it with regard to this
3 witness?

4 MR. STAMBOULIEH: Yes, your Honor.

5 THE COURT: Okay. Thank you, sir. We appreciate
6 you appearing.

7 THE WITNESS: Thank you.

8 (The witness was excused.)

9 THE COURT: All right. You may call your next
10 witness.

11 MR. STAMBOULIEH: Plaintiffs will call William
12 Robinson.

13 THE CLERK: You can step right over here. Can you
14 please state your name for the record.

15 THE WITNESS: William Robinson.

16 THE CLERK: Please raise your right hand.

17

18 W I L L I A M R O B I N S O N , called
19 as a witness and being duly sworn, testifies as
20 follows:

21 MR. STAMBOULIEH: May I proceed?

22 THE COURT: You may, sir.

23 DIRECT EXAMINATION BY MR. STAMBOULIEH:

24 Q Mr. Robinson, will you state your name for the record,
25 please.

William Robinson - Direct

15

1 A William Robinson.

2 Q Mr. Robinson, did you execute an affidavit yesterday in
3 this matter?

4 A Yes, I did.

5 Q Can I show you -- I don't have an exhibit to show you
6 but it's just this affidavit document.

7 May I approach, your Honor?

8 THE COURT: You may.

9 Q Is this your signature at the bottom of this document?

10 A Yes, it is.

11 Q And this is your affidavit, correct?

12 A Yes.

13 Q Along with the exhibits attached, correct?

14 A Yes.

15 MR. STAMBOULIEH: Okay, thank you. Your Honor,
16 we'll rest on Mr. Robinson's declaration, tender him to the
17 state.

18 THE COURT: Okay. Counsel.

19 MR. MCCARTIN: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. MCCARTIN:

21 Q Good afternoon, sir, my name is Michael McCartin, I
22 represent Superintendent Bruen in this matter. Can you tell
23 me again the name of your organization?

24 A It's Gun Owners of America New York.

25 Q And is that a 501(c)(4) organization?

1 A (c) (3) .

2 Q (c) (3) . And does that mean that your organization is
3 an advocacy group that deals with political and lobbying
4 organizations?

5 A We're a 501(c) (3) so technically we can't recommend
6 anybody to vote for, that type of thing. We do, our primary
7 mission is to educate the public on gun laws, gun rights,
8 Second Amendment issues.

9 Q And that is your primary mission, to advocate on behalf
10 of your members in legislatures and courts, is that fair to
11 say?

12 A Well, if we see something we're interested in or that's
13 going to violate our constitutional rights, yeah, we will
14 pursue that.

15 Q Now how many phone calls did your organization receive
16 as a result of the passage of the CCIA?

17 A Well, I'm not sure the figure I put down on the
18 affidavit but 20, could be, right, since I did that actually
19 it's probably another three or four more so in the 20s.

20 Q And how many phone calls would you get on an average
21 day at your organization prior to July 1st of 2022?

22 A Well, we don't -- I wouldn't say, a week, can I say
23 weekly? Like three to four a week say. We didn't have a lot
24 of phone calls on, you know, only, as Erich Pratt said
25 earlier, when things are hot, there's a serious concern of

1 our members, then I get the phone calls. I personally take
2 most of the phone calls.

3 Q Did you receive a number of phone calls as a result of
4 the Supreme Court's decision on *Bruen*?

5 A Yes, received a number of them, positive phone calls,
6 people were really very happy that that happened.

7 Q How many phone calls did you receive from June 23rd,
8 the date of the issuance of the decision, until July 1st?

9 A I can't -- I'm sorry, I can't tell you, I'm not sure, I
10 don't know.

11 Q Who answers the phones at your organization; was that
12 you?

13 A Pretty much, we have a 24-hour answering service,
14 machine type of thing and it kicks into my cell phone.

15 Q So a lot of the phone calls that you received, in the
16 20s or so, went to your message machine, your voice mail?

17 A Well, it doesn't leave a message, it flips over right
18 to my cell phone after a few calls -- few rings, then it
19 kicks into my cell phone.

20 Q Okay. So did you answer all of those 20 or so phone
21 calls?

22 A Eventually I did, yes, yeah.

23 Q Oh, so you would call them back?

24 A I tried to call most of them back, I'm still behind a
25 couple.

William Robinson - Cross

18

1 Q How many e-mails did you receive, after July 1st?

2 A Not sure I put on that document because I get them
3 every day, a lot of e-mails, quite a few, dozens of them.

4 Q Dozens like 24?

5 A Yeah, something like that, I would say, related to ...

6 Q How many e-mails would you get in a normal day, prior
7 to July 1st, 2022?

8 A Related to Gun Owners of America and gun material, not
9 that often, every -- well, two or three a day.

10 Q I want you to assume that the standing period is
11 between July 1st, the date of the act being passed, and the
12 date of your lawsuit being July 11th, how many phone calls
13 and e-mails did you receive in that 11-day period?

14 A I don't know. I can get back to you on it, I mean I
15 think I can get back to you on it, but I'm not sure.

16 Q Did your organization gain additional funds as a result
17 of having new members sign up with your organization and
18 after July 1st, 2022?

19 A Well, looking back listening to Erich Pratt's interview
20 earlier, the -- we did get a slight increase in membership,
21 so we did get some positive, more members, we did get some
22 more -- new signups but mainly the contributions we get from
23 people because they're concerned about hiring the lawyers to
24 go after these recent, you know, gun laws passed.

25 Q I'm sorry, sir, I didn't mean to interrupt.

1 A I was going to say so we got an increase on funding to
2 hire lawyers to go after the suit regarding these new laws
3 passed, that was a big increase.

4 Q How much more of an increase in contributions did you
5 receive?

6 A Money wise I'm not sure, I'd have to get back to you on
7 that but it was mainly notes, we have checks were sent in to
8 hire attorneys to fight, you know, to fight the new gun laws,
9 that's what was primarily the increase was. We did get some
10 new members obviously and additional funding but -- does that
11 answer your question or --

12 Q Well, let's focus first on the new members. About how
13 many more did you get?

14 A Maybe a dozen.

15 Q And the contributions, is it in the thousands of
16 dollars in addition?

17 A Well, the thousands for to hire a lawyer, for lawyer
18 fee.

19 Q Right, that's what I'm talking about.

20 A Legal action.

21 Q How much more did you receive in contributions since
22 July 1st of 2022?

23 A I can't give you the figure off -- I can just tell you
24 that what I know and I'm fairly positive of is about -- over
25 5, \$6,000 we received for legal fees, to put towards legal

1 fees, to hire an attorney.

2 Q Your declaration indicated that you spent about \$700 on
3 hotels, \$400 on gas and \$400 on meals?

4 A Yeah, that's correct.

5 Q But you've taken in thousands of dollars from
6 additional donations, right?

7 A For legal matters, yes.

8 Q So it's been, the act itself has been a net positive
9 for you as far as your finances go, is that correct?

10 A Up to this point, so far, yes.

11 Q So the act being passed is a boon for your
12 organization, is that fair to say?

13 A Wouldn't call it a boon, it was money sent necessarily
14 to make the rounds, as I say in that affidavit, to talk to
15 groups of people throughout the state of New York, time,
16 energy, gas, hotel bills, food, it was designed to shall we
17 say strengthen our end, put together a team to go after these
18 new gun laws, legally.

19 Q Now, your whole purpose in your employment with your
20 organization is to do that very thing, meet with members and
21 explain to them what's going on in the gun world, is that
22 fair to say?

23 A Yeah, yes.

24 Q So that's your core mission, right?

25 A That's what I been doing as the communications

1 director, making the rounds.

2 Q So you haven't been diverted from your core mission,
3 you've been doing your core mission, is that fair to say?

4 A For this specific thing I have been diverted, I haven't
5 had to in the past run all over the state of New York to put
6 together this information and the concerns of gun owners
7 throughout the state of New York. This is a heavy duty
8 problem to our gun owners.

9 Q Well, sir, you've told me that your core mission is to
10 do what you've been doing, is to go around the state --

11 A On --

12 Q -- and talk to your members?

13 A Of late.

14 Q And educate them on gun issues, is that fair to say?

15 A Of late, yeah, I've had to do that of late. Normally
16 it's just Monroe County area out of, you know, e-mails, phone
17 calls and our local meeting, GOA New York meetings in the
18 greater Rochester area, so this is unusual for me to have to
19 be running all over the state of New York.

20 Q But it's fair to say that every dime that you spent on
21 this, you've taken in a dollar, is that fair to say?

22 A I guess, it's off -- I'd have to think about that, but
23 it sounds ... as far as taking in a dollar, would you explain
24 that more?

25 Q Sure. You've taken in a lot more money than you've

William Robinson - Redirect

22

1 spent dealing with this act, fair to say?

2 A Up to this date, at this point, yes.

3 MR. McCARTIN: Thank you, sir. I have no other
4 questions. Wait, I just want to confer with counsel.

5 THE COURT: Go ahead.

6 MR. McCARTIN: No other questions, your Honor,
7 thank you very much.

8 THE COURT: Any redirect?

9 MR. STAMBOULIEH: Brief redirect, your Honor.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION BY MR. STAMBOULIEH:

12 Q Mr. Robinson, you haven't paid your attorneys yet, have
13 you?

14 A No.

15 Q Okay. And then one other question. Gun Owners of
16 America New York, is that a sister corporation of Gun Owners
17 of America?

18 A No, it's strictly a separate corporation.

19 Q Okay. Just named kind of the same?

20 A We have worked together on projects.

21 Q But you're not affiliated with GOA or GOF?

22 A No, totally separate entity, separate corporation.

23 MR. STAMBOULIEH: Okay, thank you so much.

24 THE COURT: Anything further on that?

25 MR. McCARTIN: No, your Honor, thank you.

Ivan Antonyuk - Direct

23

1 THE COURT: Okay, you may step down, sir, thank
2 you.

3 (The witness was excused.)

4 THE COURT: Next witness, please.

5 MR. STAMBOULIEH: Plaintiffs will call Ivan
6 Antonyuk.

7 THE CLERK: Please state your name for the record.

8 THE WITNESS: Ivan Antonyuk.

9

10 I V A N A N T O N Y U K , called as a
11 witness and being duly sworn, testifies as follows:

12 MR. STAMBOULIEH: May I proceed, your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION BY MR. STAMBOULIEH:

15 Q Would you state your name for the record, please?

16 A Ivan Antonyuk.

17 Q And can you spell your last name for the court
18 reporter?

19 A Sure, it's A-n-t-o-n-y-u-k.

20 Q Mr. Antonyuk, did you execute an affidavit yesterday to
21 be filed in this case?

22 A Yes, I did.

23 MR. STAMBOULIEH: Judge, may I approach?

24 THE COURT: You may.

25 Q I'm going to show you Docket 41-3. Do you recognize

1 this document?

2 A Yes, I do.

3 Q And is this your signature on page 4?

4 A Yes, that is.

5 MR. STAMBOULIEH: Plaintiffs will rest on his
6 affidavit, your Honor.

7 THE COURT: Okay. Cross-examination?

8 MR. McCARTIN: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. McCARTIN:

10 Q Morning, sir.

11 A Morning.

12 Q My name is Michael McCartin, I'm with the Attorney
13 General's office and I represent Superintendent Bruen. What
14 city do you live in, sir?

15 A Schenectady.

16 Q And have you ever been a trooper at any point in your
17 past, New York State police officer?

18 A No, I did not.

19 Q When did you obtain your concealed carry permit in
20 New York?

21 A 2009.

22 Q I'm sorry, could you repeat that?

23 A 2009.

24 Q 2009, thank you. And which county in New York issued
25 your concealed carry permit?

1 A Schenectady.

2 Q Now, is it true that when you obtained your concealed
3 carry permit in 2009, you had to fill out a concealed carry
4 application, a PP3?

5 A Well, I don't remember the name or numbers of the forms
6 but I paid all the regulations and requirements to obtain my
7 pistol permit.

8 MR. McCARTIN: Your Honor, I wish to put Exhibit 1
9 on the ELMO if that's okay to show the witness?

10 THE COURT: Plaintiff's counsel has seen it?

11 MR. McCARTIN: Yes, he has a copy.

12 THE COURT: Okay, go ahead.

13 Q Sir, do you recognize that form PP3 just to be like the
14 form that you filled out in 2009 for your concealed carry
15 permit?

16 A Been awhile ago but looks familiar.

17 Q Looks familiar to you?

18 A Correct.

19 Q Now isn't it true, sir, that in order to obtain your
20 concealed carry license in 2009, you had to provide the
21 issuing body with four character witnesses to vouch for
22 your -- on your behalf?

23 A Yes.

24 Q Now, there was nothing arduous about that for you, was
25 there?

1 A No.

2 Q The person that issued you a concealed carry license
3 back in 2009 was a judge in Schenectady County, is that
4 correct?

5 A Correct.

6 Q And it was not anyone dealing with the state police, is
7 that fair to say?

8 A I would assume so.

9 Q Did you personally appear before that judge in his
10 courtroom or her courtroom?

11 A I did not.

12 Q Sir, do you use your weapon only in a manner that does
13 not endanger oneself or others?

14 A I'm safely carrying my gun when I'm allowed to, I'm
15 exercising my rights and also doing competition events and
16 hunting and my -- always been concerned to do it safely and
17 to do it by the law.

18 Q Sir, since 2009, have you made it a regular practice to
19 carry your concealed firearm onto the private property of
20 others even if you knew that they did not consent to you
21 bringing your firearm on their private property?

22 A As of right now, I'm still allowed to carry my firearm
23 if I'm going to the gas station, if I'm going to pick up my
24 kids from their friends' houses, if I'm going to the stores
25 or pharmacy to pick up prescriptions for my children. I'm a

1 father, I'm a husband, so sometimes some requirements during
2 the day that I have to do, like I mentioned before, picking
3 up my kids, dropping my kids off --

4 Q Sir, I don't want to interrupt but you're drifting off
5 from the question that I actually asked. Now if you know
6 that somebody does not want you to have a firearm on their
7 private property, do you still bring that firearm on their
8 property?

9 A If somebody will have little sensitive case regarding a
10 firearm, I will, just would not come over to this person's
11 property if I'm not welcome there.

12 Q So would you therefore admit that if another man or
13 woman does not want you to be armed with a firearm on their
14 private property, that is something that you must honor?

15 A Correct.

16 Q You mentioned wanting to take the gun to your doctor's
17 office. Do you know if your doctor wants you to take the gun
18 onto his property or her property?

19 A I never knew any doctor that would require me not to
20 carry the gun or to have any opinions regarding the firearms.
21 I've never been approached with the question, I've never been
22 approached with a requirement not to be able to bring the gun
23 over. Beside my children's doctors or my own doctors, I also
24 have a consulting business and some of my clients are doctors
25 and anytime during the day or night, I can receive a phone

1 call with system problems, I'm supporting IT environment,
2 that I have to come over right away to address one or another
3 issue with the systems, and like I mentioned before, I always
4 try to carry to protect myself and protect my family. And as
5 of right now, I'm still allowed to bring my firearm to see my
6 clients, as I mentioned before, who is also in the health
7 care industry.

8 Q Did you ever ask your doctor if your doctor wanted you
9 to be armed on his or her property?

10 A I did not, but I do know some of my clients are hunters
11 and they know that I'm a gun owner and never had any issues
12 with that.

13 Q Now you mentioned in your declaration that you wanted
14 to bring a gun to your church. Do you know if your church
15 wants guns on its property?

16 A Again, I never been told that there's anybody, any
17 church have any issues with firearms, and I didn't see any
18 signs stating that I'm not allowed to bring the firearm. And
19 as of right now, I want to say that I don't see nothing
20 prohibiting me to bring a firearm if I want to bring it to go
21 for service at the church but as of right now, I did not
22 bring any guns to the church.

23 Q You mentioned that you wanted to carry a gun into
24 Walmart --

25 A Correct.

1 Q -- firearm into Walmart. Do you know if Walmart wants
2 you to carry a firearm onto its property?

3 A Well, I didn't ask and as far as I know it's still
4 legal to carry and if I'm somewhere and my wife call me, ask
5 me to pick up some groceries or if I'm on the way to
6 somewhere and I have to do quick shopping, I would have to go
7 home to disarm or leave my firearm in the car, I would have
8 it on me safely and that's usually, absolutely one of my
9 concerns, to carry when I can and if I'm told not to, I will
10 leave the premise.

11 Q Now you mentioned wanting to carry a firearm into a
12 movie theater. Do you know if a movie theater that you go to
13 wants you to have firearms on their property?

14 A As far as I know, some movie theaters have signs
15 outside that will not -- ask you not to bring the guns over.
16 I'm not really a big movie goer because of not, you know, the
17 diminished feeling of safety that I will get by going to a
18 movie theater without being able to protect myself.

19 Q Do you know if any of these groups or organizations,
20 the doctor's office, Walmart, the movie theater, do you know
21 if any of them know that you're carrying a firearm on their
22 property?

23 A I know that physicians, some of my clients, they know
24 that I'm a gun owner, they know that I'm carrying, and they
25 never stated any issues with that.

1 Q Is there any harm in you asking these individuals if
2 you could carry on their property?

3 A Can you repeat the question, please?

4 Q Sure. Is there any harm to you to ask these
5 individuals if they want you carrying on their property?

6 A No, not really.

7 Q Would you ever go onto the private property of another
8 over their objection with you carrying a firearm?

9 A No, I will not.

10 Q Now isn't it true that you're up for recertification of
11 your concealed carry license sometime around January of 2023?

12 A Correct.

13 Q Have you been recertified in the past every three years
14 since 2009 when you first obtained your concealed carry
15 license?

16 A I did it once, I believe it's five years ago, I'm also
17 required to recertify every five years.

18 Q Can you tell me what your recertification entails?

19 A I have to go to the website and put in any new firearms
20 on my license and take any firearms that are no longer
21 possessed or owned.

22 Q So what's the difference between a renewal of a
23 license, carry license, and recertification, do you know?

24 A Well, by the new CCIA requirements, it will require to
25 take additional safety courses, additional firearm training

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1 at the fire range that I wasn't required to do before.

2 Q Are you aware that the state police has indicated that
3 for recertification, additional training is not necessary?

4 A No, I do not. The way the law is written, it's -- I'm
5 not a lawyer, for me as not a lawyer reading these laws is
6 really confusing.

7 Q Have you ever been denied recertification of your
8 license?

9 A No, I did not.

10 Q Have you taken any steps to apply for a concealed carry
11 license under the new provisions of the CCIA?

12 A No, not yet.

13 Q Other than through this lawsuit, have you had any
14 interactions with the New York State Police over the past
15 three months?

16 A No.

17 Q Has any member of the New York State Police ever
18 threatened you with arrest or prosecution?

19 A No.

20 MR. McCARTIN: Your Honor, I don't have any other
21 questions. Thank you very much.

22 MR. STAMBOULIEH: I have no followup, your Honor.

23 THE COURT: Okay. Okay, sir, you can step down,
24 thank you.

25 (The witness was excused.)

1 MR. STAMBOULIEH: Your Honor, I don't see -- is
2 defendant Bruen here?

3 MR. THOMPSON: Your Honor, we understood, as we
4 said in our letter of last night, that Superintendent Bruen
5 was relieved of any requirement to be here based on a
6 conversation with your chambers back in July.

7 THE COURT: I think you were told that was your
8 decision.

9 MR. THOMPSON: Yes.

10 THE COURT: As to whether or not you had him attend
11 and apparently you made a decision that he's not here.

12 MR. THOMPSON: That's correct.

13 THE COURT: So --

14 MR. STAMBOULIEH: Well, may I briefly just explain
15 to the court what I wanted to ask defendant Bruen, because I
16 think it's germane to the issue and it's something that I
17 wanted to ask, maybe like two minutes, Judge?

18 THE COURT: Well, you can certainly get into it in
19 your argument.

20 MR. STAMBOULIEH: That's fine.

21 THE COURT: And if you, you know, if you feel that
22 it's vital to your proof, you certainly could subpoena him
23 and I can adjourn the hearing to have him attend if you feel
24 that it's, you know, that critical to your proof.

25 MR. STAMBOULIEH: I'm not going to make the court

1 do that, your Honor, and I don't think it's critical but I do
2 just want to make a few points.

3 THE COURT: Okay.

4 MR. STAMBOULIEH: Thank you.

5 THE COURT: Okay. And we'll allow you to do that.
6 So any other witnesses other than --

7 MR. STAMBOULIEH: No, your Honor.

8 THE COURT: -- the ones you've called?

9 MR. STAMBOULIEH: No, your Honor.

10 THE COURT: Okay. And then we'll proceed to
11 argument in the manner I described. We'll give you an
12 opportunity to make your initial argument, let the defense
13 counsel respond, and then we'll go back and forth one more
14 time, shorter probably. But we'll hear you, okay?

15 MR. STAMBOULIEH: Yes, sir. May I proceed?

16 THE COURT: You may proceed when you're ready.

17 MR. STAMBOULIEH: Thank you, your Honor.

18 Your Honor, we're here today because New York did
19 not like the Supreme Court's decision in *Bruen* and we know
20 that they didn't like it because the Governor came out either
21 the day of or the day after and made a bunch of statements
22 that the Supreme Court was a politicized branch and just
23 excoriated them. And then we have this law that was put in
24 the day before July 1st, no public debate, no three day for
25 the public to look at it, no comments accepted, and then

1 passed the next day.

2 It will fundamentally change and has fundamentally
3 already affected the way that New York is issuing permits and
4 the way that New Yorkers can carry and exercise their Second
5 Amendment right which, as the Supreme Court held in *Bruen*, is
6 a right, you know, you have a right to publicly carry a
7 firearm.

8 So right now, as Mr. Antonyuk explained, he can go
9 into Walmart, he doesn't need to ask permission before he
10 goes in, he's not a prohibited person, and as long as they
11 don't have a sign on the front of Walmart saying he can't
12 carry, he's allowed to carry there, because it's a place
13 that's open to the public. The same for his doctor's office
14 clients. This bill will change it to where not even the
15 doctor in charge of his own facility can carry a firearm and
16 cannot authorize Mr. Antonyuk to carry a firearm in his
17 premise. And it's like that for all kinds of different
18 things. Like if there was a psychiatrist that had to deal
19 with crazy patients, she or he wouldn't be able to carry in
20 the health care provider location. GOA has a member who's an
21 oral surgeon on Long Island, we spoke to him, he can't carry
22 a firearm in his business after September 1st, and he can't
23 authorize anyone to carry.

24 So the way that New York has gone about this, it's
25 not that they're trying to protect private property rights,

1 even where I live in Mississippi, Judge, it's you can carry
2 except where you're not allowed to carry, right? So if I go
3 into a building that has a no-gun sign, I know that I'm not
4 welcome there with the firearm. If I decide that I want to
5 take it off and go in, that's perfectly fine and it's my
6 choice, just like it's the property owner's choice to
7 disallow someone from carrying. But the state has taken away
8 all of this and said, the default position is no carry unless
9 specifically authorized to carry by the proprietor. So if
10 the experience is anything like in any other state that I've
11 been to, people aren't going to post signs saying this is
12 allowed. Most places, if they don't want you to carry, will
13 post a no-gun sign. It works everywhere else and there's no
14 reason that New York should be different than all of the
15 other places. Because it fundamentally eviscerates the right
16 to publicly keep and bear arms when you have all of these
17 places that are now off limits.

18 As Mr. Antonyuk said in his first declaration that
19 was filed with this court, he's very concerned about having
20 to disarm himself to simply go to a gas station. And what
21 makes this law worse is, number one, he has to keep the gun
22 in the car which they tell you, don't keep guns in your car
23 because if the car gets stolen, now we've got a thief with a
24 gun. The second thing is he has to unload his firearm which
25 entails taking the ammunition out of it, racking the slide,

1 taking the ammunition out of the chamber and then separating
2 them, putting them in a lockbox. Well, that's great, I
3 guess, but if I'm on the side of the road because the gas
4 station won't let me carry there and let's say this gentleman
5 over here, your security guard, sees me, you know, unholster
6 my firearm and sees a man with the gun, the police are going
7 to do something about that, I would think. So he's now
8 increased his chances of having a negligent discharge because
9 he's manipulating a firearm, it's not in a holster. So it
10 just introduces all of these additional risks that don't need
11 to be there. He's licensed, he's met all of the standards,
12 and he should be able to carry in all of the places that he's
13 allowed to carry.

14 I will say in *Bruen* and in *Heller*, and we briefed
15 this in our reply, they listed a very narrow group of places
16 that are the, quote, real sensitive places, the real
17 sensitive locations, you know, government buildings, schools,
18 but it's not all of these places. Like Times Square, it
19 can't be a sensitive place and even the Supreme Court talked
20 about, you know, the state of New York declaring Manhattan a
21 sensitive place and that that wouldn't be allowed. And yet
22 here we are, we're saying that all of Times Square is
23 sensitive. It could that be Times Square is sensitive at
24 certain times, but not all the time. For airlines they say
25 you can't carry it in an airport and that, logically that

1 might make sense but for people that travel with firearms,
2 they have to go into the airport with a checked bag because
3 the TSA requires you, when you're traveling with a firearm,
4 to check it in a certain way. Can't carry it in an airport,
5 Judge, if it's in my suitcase because I'm flying home, I'm
6 committing a felony and felonies strip you of your
7 constitutional rights to bear arms and there's no way to get
8 around it except for a Presidential pardon.

9 Judge, we've offered, I think, we've totaled their
10 briefing pages, both briefed 65 pages, we briefed a lot and I
11 know that it's a lot for the court to go over, we filed at
12 like 5:40 something last night. I'm happy to answer any
13 questions the court has, but all of the arguments are
14 contained in my brief so I don't want to waste the court's
15 time, I'm certainly happy to answer any questions.

16 THE COURT: I would like you to address some of the
17 standing issues that have been raised.

18 MR. STAMBOULIEH: Yes.

19 THE COURT: Facial standing, particularly with
20 regard to the memberships, the members within New York State,
21 the different organizations that have been made a part of
22 this suit.

23 MR. STAMBOULIEH: Yes, sir, yes, sir. So in every
24 other circuit except the Second Circuit, organizational
25 plaintiffs have like representational standing. So the

1 Second Circuit obviously holds that the organizations can't
2 bring 1983 claims under, and the name of the case escapes me
3 but it says that they can't bring 1983 claims, and that's
4 fine because we've also brought the case under 1331 which
5 gives the court jurisdiction to decide constitutional claims,
6 and if we shoehorn that in with 2201, declaratory judgment
7 act, then we can come to this court with constitutional
8 claims that the organizational plaintiffs raise on behalf of
9 their members that are not also Section 1983 claims, and I
10 don't think that there's a standing problem if you look at it
11 in the lens of 1331. Okay, I thought you were going to ask a
12 question.

13 THE COURT: No, go ahead.

14 MR. STAMBOULIEH: So some of the other facial --
15 the question was address the facial challenge. These laws,
16 they're not just a little unconstitutional or they're
17 constitutional in some instances. They're unconstitutional
18 across the board. Now I'll say, certain parts in there where
19 they talk about the sensitive locations about the schools,
20 *Bruen* and *Heller* said that, so you know, I'm not going to
21 come in here and tell you that the court was wrong because
22 that's what they said. I don't agree with it but that's what
23 they said and that's what it is. But not every piece of
24 educational property, that's obviously not a constitutional
25 thing to say, well, they're teaching a class in this building

1 right here so now it becomes educational property and it's a
2 felony, it's a felony if you carry in that building.

3 One second. There's another section in here,
4 it's -- I believe it's subsection S that talks about any
5 gathering of individuals to collectively express their
6 constitutional rights to protest or assemble. Judge, that
7 could be anything. If we go outside and we're, quote,
8 assembling, then neither one of us can carry a gun, and
9 New York would make it a felony to do so. There's no way
10 that that's constitutional.

11 But the same thing with, they keep putting in their
12 brief that New York has a compelling interest to control
13 crime. Sure, under the old *Heller* standard, we could get
14 into the interest balancing by another name and that's what
15 it is here is they're trying to say that we have a compelling
16 interest. And I'll submit to the court this absurd example.
17 If New York State's interest was so compelling to control
18 crime, we could set up a federal roadblock right here on the
19 interstate and stop every single car and maybe catch a couple
20 people with drugs in their car and they'll say, but we found
21 drugs, and therefore it's constitutional because facially,
22 you have to prove that it's unconstitutional in every
23 circumstance, and I don't think that's what the law says. We
24 could all agree that if we set up a roadblock right here on
25 this road just to check to see if people had drugs in their

1 car, we would be violating a whole host of constitutional
2 provisions and it shouldn't be any different with the Second
3 Amendment.

4 So when we look at these provisions that say that
5 we're not allowed to assemble together and have a firearm,
6 and that's where the gun show comes in, that's what Mr. Pratt
7 and Mr. Robinson were talking about, we don't know if these
8 gun shows now are going to be gun-free zones and it seems
9 absurd that we're even talking about a gun show being a
10 gun-free zone but people are assembling, right, they're
11 exercising their Second Amendment right, they're exercising
12 their First Amendment right and this makes it a felony,
13 Judge. And a lot of these, and we've briefed them
14 extensively, about which ones are addressed by *Bruen* and
15 *Heller*, and which ones are like wholly unsupported by the
16 analogues that the state has put up. And I don't envy the
17 state having to defend this because it's so bad and they have
18 to rely on really old, really racist and unconstitutional
19 things that we would look at today. When good moral
20 character was used in the 1800s to stop Black people from
21 being members of the bar, or to talk about the good moral
22 character of a slave so we could see that they were docile
23 individuals and not prone to running away. This is the kind
24 of stuff that's been put in this law. Not by name, they're
25 of course not going to admit to it, but the analogues that

1 they show point to this and the analogues that we've put up
2 point to this being only justifiable if you look at saying we
3 can ban Catholics from owning guns because they might be
4 subversive or we think that they have bad moral character
5 because they're unrepentant papists, and it's just all of
6 this stuff, all of it.

7 So I hope I've addressed your question, your Honor,
8 I will end with this. To the extent that there's any issue
9 that the court perceives that doesn't like what our standing,
10 whatever it is, all we ask is that we be allowed to amend
11 prior to September 1st. It's easily correctable in an
12 amended complaint, we'll sue everybody if we have to. I
13 mean, this issue is very, very important, and we'll be happy
14 to amend.

15 THE COURT: Okay. Thank you, sir.

16 MR. STAMBOULIEH: Thank you.

17 THE COURT: Defense counsel.

18 MR. THOMPSON: Thank you, your Honor, James
19 Thompson from the Office of the Attorney General for
20 defendant Bruen. Figured you'd like me over here.

21 THE COURT: Wherever you like as long as I can hear
22 you.

23 MR. THOMPSON: So I have a whole spiel here but
24 Mr. Stamboulieh cut his down, I'll do everyone the benefit of
25 cutting mine down as well.

1 THE COURT: You cover the points you need to cover.
2 We're not -- I'm not worried about the time you spend, go
3 ahead.

4 MR. THOMPSON: Yes, sir, your Honor. I think the
5 place to start is with Judge Amy Coney Barrett in *Kanter v.*
6 *Barr*, who wrote, "History is consistent with common sense:
7 It demonstrates that legislatures have the power to prohibit
8 dangerous people from possessing guns." In *Kanter*, Judge
9 Barrett surveyed early American legal history and concluded
10 that in order to disarm a dangerous person, the government
11 should have "evidence that he either belongs to a dangerous
12 category or bears individual markers of risk." The measures
13 that the plaintiffs are trying to eliminate today are the
14 ones that allow us to determine whether there are in fact
15 those individual markers of risk for someone who wants to
16 have a gun.

17 In this facial challenge, the plaintiffs want the
18 court to make it impossible to conduct the assessment that
19 Judge Barrett found so critical. The Supreme Court majority
20 in *Bruen* acknowledged both the importance and the
21 constitutionality of this analysis. Pointing out that there
22 is nothing wrong with "shall-issue" licensing laws that have
23 discretionary criteria so long as they "are designed to
24 ensure only that those bearing arms in the jurisdiction are,
25 in fact, law-abiding responsible citizens."

1 I'd like to talk a little bit about good moral
2 character because that's something that Mr. Stamboulieh has
3 focused on. The plaintiffs have never, not once addressed
4 the good moral character standard as it actually appears in
5 the CCIA. They didn't in their briefing, they didn't in
6 their reply, and didn't in the discussion right now. It's
7 not just good moral character in general. The CCIA says that
8 it means "having the essential character, temperament, and
9 judgment necessary to be entrusted with a weapon and to use
10 it only in a manner that does not endanger oneself or
11 others." And plaintiffs --

12 THE COURT: Can I interrupt you for a second right
13 there?

14 MR. THOMPSON: Of course, your Honor.

15 THE COURT: You point to that language and you
16 refer to the Connecticut statute that it was modeled after.
17 Explain to me how someone's going to carry a gun and not
18 endanger themselves or someone else when the purpose of that
19 is self-defense, in most circumstances that you would have a
20 gun. I have some problems with that language.

21 MR. THOMPSON: Well, I think endanger oneself or
22 others is understood to mean outside of the self-defense
23 situation. We -- there are many laws that have that standard
24 in, you know, being a danger to oneself or others and that's
25 not something that's as applied involves self-defense. You

1 know, for instance, mental hygiene laws talk about somebody
2 being a danger to themselves or others, we would never say
3 that somebody is subject to the mental hygiene law because
4 they engaged in lawful self-defense.

5 THE COURT: Okay. So you're saying that the
6 language assumes that self-defense is permitted.

7 MR. THOMPSON: I think that, I think that's true
8 and I think that language, endangering oneself or others or
9 being a danger to oneself or others, that's a standard that's
10 well known in the law and it speaks to a person's
11 dangerousness and a person's unreasonable dangerousness. And
12 that's something that the plaintiffs have never acknowledged.

13 THE COURT: Okay. But we're -- you're talking
14 about two different things. The good moral character
15 standard within the statute and then the prohibition against
16 how someone's supposed to use that weapon or what's the
17 appropriate use for someone carrying a weapon. In my view.

18 MR. THOMPSON: I'm sorry, your Honor, can I ask you
19 to explain the question a little more, I'm not sure I'm
20 following you.

21 THE COURT: I'm saying there's two different things
22 you're pointing to, the good moral character standard where
23 you're trying to say, you know, we want people of good moral
24 character and not dangerous-type people as opposed to the use
25 of a weapon and how the statute and that language is written,

1 you know, and the language that I pointed out saying that it
2 cannot be used in a manner that was going to endanger
3 yourself or other people. Self-defense necessarily endangers
4 somebody.

5 MR. THOMPSON: I think that's true, but I think
6 that the standard being a danger to oneself or others does
7 not --

8 THE COURT: Prohibit?

9 MR. THOMPSON: -- prohibit lawful self-defense. I
10 think, and obviously if we had a standard that prohibited
11 lawful self-defense, you know, we would have a profound
12 Second Amendment problem.

13 THE COURT: Okay. You're saying that language does
14 not present that problem.

15 MR. THOMPSON: I think no. When we talk about
16 being a danger to oneself or others, you talk about being an
17 affirmative danger, not a reactive danger to someone else who
18 is a danger to you.

19 THE COURT: Thank you, sir, go ahead.

20 MR. THOMPSON: Of course.

21 THE COURT: Sorry to interrupt, get back to your
22 argument.

23 MR. THOMPSON: No, no, no, please, I'm here to
24 answer your questions.

25 So the plaintiffs never engage on the dangerousness

1 standard and that's critical because that's what ties this
2 law into the history. They talk about the standard as vague
3 or open-ended or entirely discretionary but it's not. It's
4 tied directly to indicators of violence and that's consistent
5 with American history, which is full of examples of laws
6 attempting to disarm persons who would be dangerous to others
7 or to society.

8 This is a facial challenge to a statute enacted by
9 the legislature which requires the plaintiffs to show clear
10 likelihood of success on the merits and that there is no set
11 of circumstances where these statutes could be
12 constitutional. And that's something I believe
13 Mr. Stamboulieh agreed with when he was up. Under that
14 standard, there is no possible likelihood of success in
15 plaintiff's challenge to laws protecting people from guns in
16 vulnerable places which are presumptively lawful. As Justice
17 Scalia said in *Heller* and as Justice Thomas reiterated in
18 *Bruen*, "We are also aware of no disputes regarding the
19 lawfulness of such prohibitions."

20 And you heard from the plaintiffs that they agreed
21 that some of the places are constitutional, some of them they
22 disagree with. That is the definition of a statute that has
23 a plainly legitimate sweep. We may disagree with how broad
24 the legitimate sweep of the statute is and that's something
25 that should be adjudicated in as-applied challenges down the

1 line.

2 Similarly, on private property, laws prohibiting
3 the carrying of guns on private property without an owner's
4 consent are deeply rooted in American history and doctrine
5 going back to the 18th century. We believe that the Supreme
6 Court meant what it said in *Bruen*, we believe that the
7 "shall-issue" state laws that the Supreme Court said were
8 constitutional are constitutional and that's why New York
9 CCIA was based on that. And we believe that the *Bruen* test
10 of history and doctrine, fairly applied, will show that the
11 CCIA should be upheld.

12 THE COURT: On that particular point, on private
13 property, your statute flips the responsibility and says
14 that, you know, the property owner now has to post explicitly
15 guns are allowed or else they're prohibited. Address that.

16 MR. THOMPSON: First I would say that it doesn't
17 say that the private property owner has to post that guns
18 aren't prohibited, any form of express consent is sufficient
19 under the statute. I think you're right that it puts the
20 default that guns are not allowed unless the private property
21 owner has consented, but there's nothing ahistorical about
22 that and we cite a number of statutes from American history
23 on that point. Pennsylvania 1721, "If any person or persons
24 shall presume to carry any gun or hunt on the improved or
25 inclosed land of any plantation other than his own, unless he

1 have license or permission from the owner of such lands or
2 plantation," he commits a crime.

3 New Jersey, 1771, "If any person or persons shall
4 presume to carry any," there's an ellipsis in here, "to carry
5 any gun on any lands not his own and for which the owner pays
6 taxes or is in his lawful possession, unless he hath license
7 or possession in writing from the owner or owners or legal
8 possessor, every person so offending and convicted thereof
9 shall," have a crime. And that New Jersey statute, if the
10 violators were not from New Jersey, that's very much a helper
11 statute, but if the violators were not from New Jersey, they
12 were required to forfeit his or their gun or guns.

13 Texas, 1866, "It shall not be lawful for any person
14 or persons to carry firearms on the inclosed premises or
15 plantation of any citizen without the consent of the owner or
16 proprietor."

17 Oregon, 1893, "It shall be unlawful for any person
18 other than an officer on lawful business being armed with
19 gun, pistol, or other firearm to go or trespass upon any
20 enclosed premises or lands without the consent of the owner
21 or possessor thereof."

22 So this is a statute that is deeply rooted to
23 American history. Private property rights are fundamental
24 under the Constitution. And I would refer your Honor to the
25 *GeorgiaCarry* case out of the 11th Circuit because it really

1 is right on point here and does a very thorough historical
2 analysis of its own. The statute there goes far beyond what
3 New York statute did. It requires the gun holder to
4 affirmatively go up to the management of, in this case the
5 church, notify such security or management personnel of the
6 presence of the weapon or long gun and then explicitly follow
7 the security or management personnel's direction for
8 removing, securing, storing, or temporarily surrendering such
9 weapon or long gun. New York's statute does not put any such
10 burden on that. You -- it is satisfied so long as there is
11 the consent of the property owner or the lessee.

12 And as you heard my colleague speak with
13 Mr. Antonyuk, it does no harm to the gun holder to ask if
14 the -- if he should be permitted to carry a gun onto a
15 property that he's intending to go onto. And it allows the
16 private property owner to make an informed decision about
17 whether he wants not just the person but the person's gun on
18 his property. And I think that is entirely reasonable and
19 entirely consistent with both history and the *Bruen* text.

20 THE COURT: But isn't there a new requirement
21 within this statute that specifically puts the onus that the
22 property owner is going to post that guns are allowed,
23 otherwise the gun owner has to assume that they're not?

24 MR. THOMPSON: The statute says that there can be a
25 sign or there can otherwise be express consent. So it

1 doesn't have to be a sign. If Mr. Antonyuk has spoken with
2 some of his medical clients and he understands that they know
3 that he carries a gun and that they have no problem with
4 that, then of course he would be able to go on to their
5 premises because he has their consent. No sign required.
6 And so no, it's not a sign requirement, it's a consent
7 requirement.

8 THE COURT: Okay.

9 MR. THOMPSON: Your Honor, if I could take a step
10 back and talk a little bit about the issues of standing and
11 justiciability. On the organizational standing point, I want
12 to refer you to a very recent Second Circuit case,
13 *Connecticut Citizens Defense League, Inc. v. Lamont*, 6 F.4th
14 439, the relevant portion of it is 447 through 48. This case
15 is almost exactly on point. It's, the Connecticut governor
16 enacted a COVID-related measure that the plaintiff
17 organization felt was violative of the Second Amendment.
18 They filed a lawsuit. And the Second Circuit held that there
19 wasn't standing even though the organization had had to talk
20 to its members and file a lawsuit and lobby the governor,
21 because that's what the organization did. That's the
22 definition of what an interest or advocacy group does.

23 And you heard from Mr. Pratt and Mr. Robinson that
24 this is part of the core mission of these groups, including
25 to engage in litigation. Similarly, I would point to *Lawyers*

1 *Committee for 9/11 Inquiry, Inc. v. Garland*, this is a very
2 recent case, it is reported but it's only on Westlaw right
3 now so it's 2022 WL 3130649, and that's for the proposition
4 that voluntary litigation activity does not confer
5 organizational standing. That's an affirmative choice that
6 organizations make.

7 As to the plaintiff's argument that they may not be
8 able to have organizational standing under 1983 claims but
9 they have a free standing constitutional claim, as I'm sure
10 your Honor deals with quite regularly, Section 1983 is the
11 exclusive constitutional remedy for a claim that a state
12 actor has violated the Constitution, and for that we would
13 cite *Marino v. CUNY*, 18 F.Supp.3d 320 at 341 and that cites
14 to a number of controlling precedents as well. So I think as
15 a matter of law there's no organizational standing.

16 I think there's also no organizational standing as
17 a matter of fact. You heard from Mr. Pratt that he didn't
18 know if there had been a gain or loss to the gun owners based
19 on their work on the CCIA. And you heard Mr. Robinson say
20 that they had a big increase in contributions. So I think
21 certainly at the preliminary injunction stage, and standing
22 is something on which the plaintiffs bear the burden, I think
23 there's not a factual record to find it.

24 Moving beyond organizational standing, there's no
25 traceability here. You've heard from each of the witnesses,

1 no one has been contacted by the state police, no one has
2 been threatened by the state police, there's no allegation
3 that any plaintiff will imminently suffer any injury
4 traceable to Superintendent Bruen. The same analysis gives
5 rise to an Eleventh Amendment issue, because "a state
6 official's duty to execute the laws is not enough by itself
7 to make that official a proper party in a suit challenging a
8 state statute," that's a quote from the *Citizens Union* case,
9 2017 WL 2984167, at *4. And there's been no specific
10 enforcement connection or activity alleged, let alone
11 established, for preliminary injunction purposes between
12 Superintendent Bruen and any of the CCIA provisions being
13 challenged here.

14 Now plaintiffs do point out that the CCIA does have
15 some aspects in which the state police is involved, including
16 setting up an appeals board and querying the National Instant
17 Background Check database, but none of the provisions in
18 which the state police are involved are the provisions that
19 the plaintiffs claim are going to harm them, and so there
20 really is no connection here.

21 Now there is obviously a big elephant in the room
22 which is that Superintendent Bruen was in fact the defendant
23 in *Bruen*, has his name on it. But that was a case in which
24 he was not the only defendant, he was also, he had a
25 co-defendant who was the Rensselaer County judge who had in

1 fact denied pistol permits of the plaintiffs. So this issue
2 was not raised in that case and it would, wouldn't have made
3 a dime's worth of difference, just we would be talking about
4 the *McNally* standard instead of the *Bruen* standard which
5 might actually relieve some of our confusion, but it wouldn't
6 make a difference on the legal end.

7 In terms of the plaintiff Antonyuk, as he said,
8 he's not required to renew his license and the interview
9 social media disclosure and training requirements only apply
10 when the license is issued or renewed. That's from Penal Law
11 400.00(1). All plaintiff Antonyuk has to do is recertify his
12 license which as he said on the stand just involves going to
13 a website, updating his contact information, updating his
14 list of guns and affirming that he's not disqualified from
15 owning a gun. So these -- these aspects of the law that he's
16 challenging are not going to be applied to him and that's
17 fatal to standing.

18 THE COURT: Aren't the private property regulations
19 that are in the new statute, they're going to apply to him?

20 MR. THOMPSON: I think we would concede that at
21 some point, Mr. Antonyuk is going to go on private property
22 and so that would apply to him. I don't think that there's
23 anything before your Honor indicating that that is traceable
24 to the state police, and your Honor in your text order
25 pointed to the amended complaint in the *Libertarian Party*

1 case which had a number of allegations about the statutory
2 duty to enforce the laws, actions that the state police had
3 taken related to enforcing gun laws and that in and of itself
4 was not enough, as the Second Circuit held, to confer
5 standing against Superintendent D'Amico it was at that point
6 or any of the other state officials that were sued in that
7 case. So there's no traceability, there's no -- you know,
8 there's no injury in fact, there's no imminent threat of
9 enforcement from the state police, as you've heard, and I
10 think there's just no standing here, either for the
11 organizational plaintiffs or for Mr. Antonyuk. In the event
12 that the CCIA is applied against them in an unconstitutional
13 manner, they will have the opportunity to challenge that, of
14 course, and under an as-applied challenge, but there's just
15 no threat that would give rise to a claim here.

16 THE COURT: So it's your position they would need
17 to refile after September 1?

18 MR. THOMPSON: I -- no, I think they would need to
19 refile after being threatened with some sort of imminent
20 harm, and the mere enactment of the statute doesn't do that.
21 Some sort of imminent threat of enforcement is what's
22 required.

23 THE COURT: Okay.

24 MR. THOMPSON: Moving on very briefly, we talked
25 about the facial challenge standard, I don't think that's

1 seriously disputed, the plaintiffs dropped a footnote in
2 their reply saying you don't have to apply it, I don't think
3 that that's supported by the law and so really what has to be
4 proven here is that there is no legitimate -- there is no
5 potentially constitutional application of any of these
6 statutes and I don't think that that's supported, either by
7 the history or by the doctrine.

8 And we discussed good moral character, we discussed
9 how it is similar to other licensing laws that were deemed
10 "shall-issue", not just that Connecticut law. Pennsylvania:
11 Whether the applicant's character and reputation are such
12 that the applicant will not be likely to act in a manner
13 dangerous to public safety. Virginia: If the applicant is
14 likely to use a weapon unlawfully or negligently to endanger
15 others. Colorado: If the sheriff has a reasonable belief
16 that documented previous behavior by the applicant makes it
17 likely that the applicant will present a danger to self or
18 others. Illinois: If the applicant does not pose a danger
19 to himself, herself, or others as determined by the concealed
20 carry licensing review board. Rhode Island statute that the
21 Supreme Court discussed just says that, "that he or she is a
22 suitable person to be so licensed." And the Supreme Court
23 found that even that was technically "shall-issue" because a
24 "demonstration of a proper showing of need is not a part of
25 it." The Supreme Court said that, "Nothing in our analysis

1 should be interpreted to suggest the unconstitutionality of
2 these laws," and that's why it made perfect sense for
3 New York to take its standard from these laws, and have a
4 standard that involves character as linked to dangerousness.

5 We go through our historical analysis in some
6 detail. We talk about four categories of statutes: Colonial
7 laws on dangerous groups, Revolutionary era loyalty laws,
8 militia mustering laws, and Reconstruction era licensing
9 laws. The plaintiffs like to chide us for the idea that some
10 of, some of the Colonial era laws are based in racial or
11 religious animus and that is in fact true. As Judge Barrett
12 wrote in *Kanter*, these laws were adapted to the fears and
13 threats of the time and place. Obviously such laws would not
14 be constitutional today, as we say in our brief, they would
15 violate the Fourteenth Amendment. That said, what they do
16 stand for is the idea that there was a concern about
17 dangerousness, and that there could be an individual and at
18 some times a group determination of dangerousness made. I
19 will say that your defense counsel are both, as they say,
20 unrepentant papists, we would not say that such laws would be
21 constitutional now, but that was, when we look to what the
22 understanding was, the public understanding was in 1791,
23 sometimes the public understanding is going to be something
24 other than what it would be in 2022. And sometimes that's
25 for the best and sometimes that's for the worst. But a

1 clear-eyed look at history is what the *Bruen* case requires of
2 us, and so that's what we've given you.

3 Similarly, we talk about Revolutionary era loyalty
4 laws. There is this fanciful passage in the plaintiff's
5 moving brief where they talk about William Floyd, signer of
6 the Declaration of Independence, talking to a British
7 licensing officer and how that would never happen. In fact
8 it was the Continental Congress in 1776, including presumably
9 Mr. Floyd, they did it in March 1776, I know he was on it in
10 July but I would assume he would be there in March as well.
11 That directive states to go and find people who were
12 disaffected to the present government of America and make
13 sure they appeared in person, made an oath of loyalty, and if
14 they didn't or couldn't or wouldn't, make sure that they
15 would be disarmed so that they would not be a danger.

16 Militia mustering laws similarly, we discussed
17 militia laws extensively in the training section but it's
18 relevant here as well. Every male citizen, every white male
19 citizen between 18 and 45 was required to muster multiple
20 times a year and drill and if you show yourself unfit at that
21 time, you would be court martialed and you would have your
22 guns taken away at least on a temporary basis.

23 And then we discuss Reconstruction era licensing
24 laws from around the time of the Fourteenth Amendment,
25 including New York City's which is right on point. It's from

1 1878, so ten years after Fourteenth Amendment was enacted.
2 And we similarly cite to the Patrick Charles book *Armed in*
3 *America* which has an extensive list of such laws.

4 So we would say that they, these laws are deeply
5 rooted in American history and doctrine, they allow for
6 individualized assessment of dangerousness as Justice -- or
7 Judge Barrett as she was then said in *Kanter*. The plaintiffs
8 take a different view. They argue in their brief that, "The
9 Second Amendment's plain text protects the right of the
10 people to bear arms in public without having to demonstrate
11 anything to the government or obtain anything from the
12 government such as approval or a license." And there are
13 some italicized points in there. That's just manifestly
14 wrong under *Bruen*. The majority says, "Again, to be clear,
15 nothing in our analysis should be interpreted to suggest the
16 unconstitutionality of the 43 states 'shall-issue' licensing
17 regimes." Justice Alito in his concurrence says, "Our ruling
18 decides nothing about who may lawfully possess a firearm or
19 the requirements that must be met to buy a gun, nor have we
20 disturbed anything that we said in *Heller* or *McDonald* about
21 restrictions that may be imposed on the possession or
22 carrying of guns." And Justice Kavanaugh and Justice Roberts
23 likewise say, "The court's decision does not prohibit states
24 from imposing licensing requirements for carrying a handgun
25 for self-defense." That's what New York does, that's what 43

1 other states do, and I suspect the other six as well.

2 I won't go too deep into the discussion of social
3 media because the plaintiffs didn't but it falls under the
4 same individualized assessment of dangerousness. Obviously
5 no one had Facebook in 1791. But these historical laws do
6 stand for the proposition that the state can and should and
7 must try to figure out whether there is an individualized
8 indicia of dangerousness. The *Bruen* decision talks about
9 background check. Similarly Justice Kavanaugh, writing for
10 himself and Chief Justice Roberts, talks about fingerprinting
11 and background check and mental health records check.
12 Fingerprinting and mental health records checks also did not
13 yet exist in 1791. And as we point out and I know that in
14 discussing the plainly legitimate sweep, there are certainly
15 instances where, and here in the third decade of the 21st
16 century, where the individual indicia of dangerousness will
17 be present on social media. We show a couple of them from
18 the Robb Elementary shooting report, from the Florida
19 Department of Law Enforcement report on the Parkland shooter,
20 and although I know your Honor accepted it only for the
21 purposes of the public interest prong, the amicus brief of
22 Professor Schildkraut essentially is a broader and deeper
23 analysis going into about 20 pages what we go into in two and
24 including far more examples of disturbing instances of social
25 media postings prior to violence.

1 THE COURT: Okay, but I'd like you to address the
2 issue that you're putting the onus on the gun-carrying
3 applicant to disclose their social media accounts or
4 postings. Is there any such correlation in the historical
5 record? You know, there's an argument that it would be
6 equivalent that you apply for a pistol permit, you'd have to
7 turn over written correspondence, if you want to talk
8 historically, and the First Amendment issues that have been
9 raised by plaintiffs in that regard. I'd like you to address
10 that because this is new and different with regard to the
11 statute and it's certainly a law or regulation that states
12 that the state has the ability and should be authorized to do
13 a search of social media would be one thing, but to ask an
14 applicant to affirmatively turn over correspondence, what's
15 the basis for that?

16 MR. THOMPSON: Sure, your Honor. I think there's
17 two parts to that question, let me take on the first part
18 first. In terms of historic analogues, *Bruen* requires a
19 historical analogue, it doesn't require a historical twin.
20 So obviously we don't have any statutes before you that
21 discuss, you know, please show us your anonymous pamphlets,
22 but what we do have is a long history and tradition saying
23 where there are indicia of dangerousness, individual elements
24 of risk as Justice -- as Justice Barrett said, that is
25 something that state should be able to take into mind in

1 determining whether someone is too dangerous to have a gun.
2 And I think as a practical matter, postings on social media
3 are very relevant to that.

4 Now, you know, you say that it would be different
5 if there was a search that was authorized versus having to
6 disclose it. I think that's relevant to the First Amendment
7 issue; I'm not sure that it is to the Second Amendment issue.
8 I think the Second Amendment issue is about history and it's
9 about dangerousness.

10 So with that, let me pivot to the First Amendment
11 discussion, and here, and this is something that
12 Mr. Stamboulieh I think conflated, here we are back in
13 traditional intermediate scrutiny which still governs for
14 First Amendment purposes. And the social media requirement
15 is content neutral. I know the plaintiffs dispute that. But
16 a regulation that serves purposes unrelated to the content of
17 expression is deemed neutral even if it has an incidental
18 effect on some speakers or messages, but not others. So yes,
19 it's only people -- it's only gun license applicants that
20 have to disclose their social media but the purpose is not
21 geared toward that. The purpose is geared toward public
22 safety. So to satisfy intermediate scrutiny, the disclosure
23 requirement must advance important governmental interests
24 unrelated to the suppression of free speech and not burden
25 substantially more speech than necessary to further those

1 interests.

2 I think the first part of that test is pretty
3 straightforward. There's absolutely a compelling public
4 safety and crime prevention goal in gun licensing and that is
5 something that was held by the Second Circuit in *NYSRPA v.*
6 *Cuomo*, 804 F.3d at 261 and a number of other cases that we
7 cite. So it's really a question about the fit under
8 intermediate scrutiny. And under intermediate scrutiny, the
9 fit between the challenged regulation and the government
10 interest need only be substantial, not perfect. So there is
11 no requirement that in order to pass First Amendment scrutiny
12 that the law must follow the least restrictive means
13 possible.

14 Your Honor talks about, raises the issue of
15 anonymous speech. I don't think that any plaintiff has
16 raised that. Mr. Antonyuk has not alleged that he has any
17 anonymous social media accounts, none of the declarations
18 submitted by any of the organizational plaintiffs talk about
19 them having anonymous social media accounts so I don't think
20 it's properly before the court. But what I would say is that
21 we believe that the law is narrowly tailored within the
22 intermediate scrutiny framework. It's limited to a list of
23 former and current social media accounts from the past three
24 years and the use of those accounts is tied to the good moral
25 character standard and the dangerousness element of it. And

1 the Second Circuit in *Libertarian Party* previously indicated
2 that there is a plainly legitimate sweep there. They said
3 that examples of the sound application of the standard, "are
4 not beyond an ordinary person's comprehension nor are they
5 rare." And the *Libertarian Party* case also gives examples
6 like for instance if there have been threats made, specific
7 threats made of a person or indicators that a person has been
8 significantly intoxicated while carrying a firearm. So one
9 could imagine similarly if there were those same threats or
10 those same indicia on social media, I think it absolutely
11 would be a constitutional application and for the purpose of
12 this facial challenge, that's enough. If it's entirely -- if
13 it were to be applied in an unconstitutional manner against
14 an individual plaintiff, that may give rise to an as-applied
15 challenge down the line, but here there is a plainly
16 legitimate sweep.

17 THE COURT: Okay. Do you envision in the permit
18 process that certain people making the application may take
19 the Fifth with regard to their social media account?

20 MR. THOMPSON: That's an interesting hypothetical.

21 THE COURT: Because what you're asking them to do
22 is basically turn over all of my correspondence for the
23 state's review to find possibly dangerousness, and somebody's
24 going to read those presumably and make a determination which
25 may open them up possibly to some type of prosecution.

1 There's all sorts of interesting things that you're opening
2 up here with that sort of requirement. Which is why I say it
3 seems to me that the state's interest would have been, we
4 have the authority to check, as opposed to asking an
5 applicant to turn over their social media accounts.

6 MR. THOMPSON: I think the question is -- well, let
7 me -- two answers to that question, let me do the first one
8 first?

9 THE COURT: You got it, go ahead.

10 MR. THOMPSON: There are, there is a case where
11 there have been a number of hypotheticals put out, by
12 Mr. Stamboulieh, by us, and by your Honor, and again we come
13 back first to the facial standard. If there is a plainly
14 legitimate sweep here, and there is, then at this stage it is
15 constitutional facially. Now if that hypothetical came to
16 pass that someone took the Fifth, I think that would be a
17 very interesting case to litigate in front of your Honor. As
18 you know, taking the Fifth can give rise to a civil inference
19 but I don't even want to speculate. I think that's a very
20 interesting case that could happen in the future but it's not
21 one that's presented here, it's not one that really matters
22 to the facial challenge to the statute.

23 THE COURT: Okay.

24 MR. THOMPSON: As to sensitive places, I won't go
25 too far into what we've already said. There is I think an

1 agreement between the plaintiffs and the defendants that at
2 least some of these sensitive places are constitutional.
3 That is a plainly legitimate sweep for the purpose of the
4 facial analysis and we've -- beyond that, I'll rely on our
5 brief in terms of the historical statutes and analysis that
6 we've cited.

7 Private property we've discussed. We have a number
8 of historical analogues, and again I refer, I would refer
9 your Honor to the *GeorgiaCarry* case. And in terms of the
10 challenge to training requirements, as we went into some
11 great historical detail on and if your Honor's interested in
12 jumping down a rabbit hole, you can take a look at Friedrich
13 von Steuben's Regulations for the Troops of the United States
14 that talk about what actually goes into militia training or
15 went into militia training at that time, in 1791 and after.
16 All of us, with the exception of your Honor because judicial
17 officials were exempted, would be meeting multiple times a
18 year and spending hours on mandatory training and be
19 potentially punished criminally or by court martial if we
20 didn't.

21 THE COURT: You want to address the argument that
22 it's particularly arduous to try and dissuade people from
23 their constitutional right to carry?

24 MR. THOMPSON: I'm not sure if I understand, who is
25 dissuading?

1 THE COURT: The applicant.

2 MR. THOMPSON: I don't think that there's any
3 effort here to dissuade anyone from the constitutional right
4 to carry. I think that there is a training requirement in
5 order to make sure that, in order to make sure that the
6 applicant is capable of effectively handling a firearm. I
7 think that training requirements are deeply rooted in
8 American law and New York's training requirements are not
9 dramatically out of step with other states as we point out.
10 I don't think there's any dissuading going on.

11 THE COURT: Your position is that it's not
12 particularly arduous in comparison to other training
13 requirements in other states?

14 MR. THOMPSON: I think that's our position. It's
15 also not particularly arduous in terms of the amount of hours
16 or in terms of the amount of cost. Again, this is a
17 requirement that applies only when a license is issued or
18 renewed. So it's something that you have to do in Mr. --
19 well, not in Mr. Antonyuk's case but in the case of another
20 Schenectady County resident, it's something that you have to
21 do once. If you're a resident of New York City, Nassau,
22 Westchester, or Suffolk, it's something that you have to do
23 when you first apply and then on the first renewal and after
24 that you only recertify. So I think, you know, if you're
25 talking about hours, it's, you know, 16 hours once or 16

1 hours twice over a period of three to five years. I don't
2 think that is unconstitutionally onerous.

3 And similarly, in terms of any costs, first of all,
4 those costs are not imposed by the state police, they're
5 imposed by localities or private trainers, and I think under
6 the *Kwong* case, *Kwong v. Bloomberg*, although Mr. Stamboulieh
7 is correct as he pointed out that that was decided under the
8 pre-*Bruen* standard, I don't think that there is an
9 unconstitutionally onerous burden from the training
10 requirements.

11 And so your Honor, if you have no further
12 questions, we believe that under the *Bruen* standard, CCIA's
13 constitutional and the preliminary injunction motion should
14 be denied. Thank you.

15 THE COURT: Thank you. And the reply, I'm going to
16 limit parties just because of the time.

17 MR. STAMBOULIEH: Yes, sir.

18 THE COURT: If 15 to 20 minutes is sufficient for
19 you to cover --

20 MR. STAMBOULIEH: Yes.

21 THE COURT: -- let's try and shoot for that mark.

22 MR. STAMBOULIEH: Sure, yes.

23 THE COURT: You can go a little over, but I don't
24 know that everybody wants to be here all day.

25 MR. STAMBOULIEH: Right, right, sir, of course.

1 May I proceed?

2 THE COURT: You may.

3 MR. STAMBOULIEH: So there's just a couple things
4 that I want to point out that probably demonstrate to the
5 court how confusing this new law is.

6 So your Honor mentioned something about carrying in
7 a medical provider's, health provider's location and my
8 friend over here talked about, well, you just need to have
9 consent, it's not a matter of being prohibited. If we read
10 the statute though, the statute eliminates the ability to
11 carry into a -- one second, just want to make sure I get it
12 right. Any location providing health, behavioral health, or
13 chemical dependence care or services. There's nothing that
14 anyone that owns one of these providers can post a sign
15 saying that someone else can carry and that's what I said at
16 the beginning of my argument. Mr. Antonyuk, who has medical
17 doctors as clients, can't tell him, you know, Ivan, we know
18 you're a good guy, a decent guy and you carry a gun, come on
19 over, it's specifically banned from doing this.

20 And like the *GeorgiaCarry* case about carrying in a
21 church, New York has taken that off the table. New York says
22 that you can't have -- you can't carry in any place of
23 worship or religious observation. But what the court will
24 not see is anything in here that says if you post a sign,
25 you're okay. And you can't even go up to the person at the

1 front door of the church like in *GeorgiaCarry* and say, hey,
2 I've got a gun, is it okay if I come in here? And it's a
3 little bit different in this case where the church doesn't
4 care if you carry or where the church posts something that
5 says you can't carry there. So, and I think that that -- the
6 *GeorgiaCarry* person wanted to be able to carry in a church
7 that was otherwise off limits and didn't want that there, and
8 that's their right if they don't want it there. And the
9 plaintiff, as you heard Mr. Antonyuk say earlier, he's not
10 going to go -- if he's not wanted, he's not going to go
11 there. And so I think that that case doesn't really help the
12 defendants at all because you can't carry in New York in a
13 church, period, end of story on September 1st.

14 He also discussed Judge, now Justice Amy Coney
15 Barrett's dissent in the *Kanter v. Barr* case, and the
16 fascinating thing about Justice Barrett is in that case she
17 would have held, and she was in the dissent, but she would
18 have held that nonviolent felons probably don't lose their
19 gun rights, and that's not even the case we're making here,
20 Judge, so what she was talking about when she said that
21 dangerous people can be disarmed but they have to be
22 dangerous. And luckily, the state has a way to find out if
23 someone's dangerous without having to go into the social
24 media stuff, they can run a NICS background check, they can
25 go to the state police, they can say, Mr. Stamboulieh, where

1 have you lived the last five years? I can say, oh, I lived
2 in Mississippi, I spent some time in North Carolina, I lived
3 overseas too, but you know, they can do some things without
4 saying, Mr. Stamboulieh, let me look at your Twitter. And
5 that's another good point. What is social media? I have an
6 idea of what it is, I'm sure the defendants have an idea of
7 what it is, but it's going to depend on who we're talking to
8 because I don't believe it's defined in the law. So is it
9 only Twitter? Is it also my e-mails? Is it my posts on
10 Reddit? If someone has an Onlyfans account, which I don't
11 have, but if they did, are they going to have to put that up
12 and then maybe the person looking at it is saying, well, I
13 don't want this person to carry a gun, they're not dangerous
14 but I just don't agree with selling naked pictures of myself
15 online. So there's all kinds of different things that aren't
16 defined well in this law that are only going to cause
17 confusion and we believe are unconstitutional.

18 One thing I would say about the private property,
19 that they don't have to post but they need express consent.
20 That's kind of a little scary because if someone comes in
21 only on the word of someone, you know, come in, I have a gun,
22 you can come in, and then that person says, maybe you should
23 leave now because you're carrying a gun, we're going to have
24 a he said/she said versus -- on the word of I told them they
25 could come in, I didn't tell him he could come in, and that

1 just strikes me as something that we really shouldn't force
2 people to have to go down those rabbit holes. It needs to be
3 if you can't carry there, you can't carry there without this
4 consent, express consent or whatever that means.

5 I would also say that the six states that are
6 discussed in the Supreme Court case that had the heightening
7 justifiable need in New Jersey, exceptional case requirement
8 in Hawaii, it wasn't enough to hold the day, at the end of
9 the day we have a right to public carry. So when we
10 cherry-pick these statutes, and I'm not saying that
11 pejoratively, there's not a lot of them and so they picked
12 the ones that they had that say you can't have a gun on
13 someone's land in Texas in 1870 or you can't have a gun in
14 someone else's land in New Jersey in 1720, these are very few
15 places, very few states, colonies, what have you, that don't
16 establish that it was a tradition that you couldn't carry
17 onto someone else's property. And a lot of these statutes,
18 as we briefed in our reply, look like they're antipoaching
19 laws, it says you can't bring a killing device. Well, the
20 people that write statutes now don't call them killing
21 devices, and they don't call them killing devices in the
22 CCIA, it's firearms and guns. So I think these are mostly
23 antipoaching statutes versus something else.

24 There is one other group of individuals that are
25 required to give social media and those are sex offenders.

1 So there's a case that they cite in their brief, I believe
2 it's the *Doe* case where it says that sex offenders have to
3 provide identifiers, identifiers meaning what's your Twitter
4 handle, some other identifiers I would guess like maybe IP
5 address. The court in *Utah*, I think that was the case they
6 cited, struck that statute as unconstitutional, as an
7 invasion of the First Amendment. And then Utah went back and
8 said, well, you don't really have to give us your passwords
9 but if we are doing an investigation and we just happen to
10 know you're a sex offender, you still have to provide us with
11 the identifiers and the court at that point said, okay, it's
12 okay because this guy's already convicted of a serious crime
13 and what you're providing the police is material for an
14 active investigation into child exploitation or some other
15 type of crime like that. But so, you know, it's just weird
16 being, as a gun owner being lumped in with a group of sex
17 offenders that I have to turn over my social media.

18 I will say two other things. The traceability,
19 it's not implemented yet, Judge, we're not saying that
20 they're implementing it right now, there's no allegation that
21 they're currently implementing it. When Ivan recertifies his
22 permit, it's going to go to the superintendent of state
23 police. One of the questions I wanted to ask defendant Bruen
24 is about the training. Everything I've heard says that the
25 training's not going to be even a thing until April of 2023

1 and so on September 1st when people -- when other GOA members
2 go to apply for their permit, there's no training that they
3 can have because the superintendent has to come up with it.
4 There's no training. And I guess we'll just have to see what
5 comes out with that.

6 I'll answer the court what we're trying to do, we
7 want to maintain the status quo. It does maintain, you know,
8 we're asking to just maintain the status quo. Obviously
9 we're post-*Bruen* right now so that is going to preclude the
10 proper cause but all of the parade of horrors that the
11 defendant has put forth in the briefing could happen right
12 now because right now the CCIA is in effect. So all of these
13 things that New York has been doing since the Sullivan Act,
14 1911 or '13, whichever date it was, has been this way since
15 then. So the horrible things, the public safety, all of this
16 extra stuff could have always happened in these past 110
17 years or however long it's been, and just now it's an
18 emergency for them to pass something without going through
19 all the procedural stuff that I don't really know, but to put
20 this in to further restrict people's carry, and we're just
21 asking for status quo and we only need a substantial
22 likelihood of success on the merits, we don't need to be
23 certain that we're going to win. But we need a substantial
24 likelihood and I think that we've provided that to the court
25 in the briefing, your Honor.

1 THE COURT: Okay, sir.

2 MR. STAMBOULIEH: Thank you.

3 THE COURT: Thank you. And brief reply.

4 MR. THOMPSON: Very brief, your Honor. Three
5 points, hopefully I'll be out within two minutes. First of
6 which, Mr. Stamboulieh is correct that the recertification
7 does go to New York State Police, this is the website that
8 Mr. Antonyuk talked about where you input your information,
9 but there's no harm alleged from the recertification process.
10 That doesn't carry with it any of the consequences that the
11 plaintiffs are talking about. There's no social media check,
12 no interview, there's no harm from recertification.

13 Number two, the plaintiffs discuss our historical
14 antecedents on property and sort of deride them as
15 antipoaching laws. I don't think that that's something that
16 is a valid reading of these laws, they are not so limited.

17 And number three, and this is sort of an
18 overarching point that I think touches on the standing
19 issues, touches on the facial standard, and touches on the
20 merits as well. These hypotheticals that we've gone
21 backwards and forwards on, could Mr. Antonyuk be arrested for
22 bringing a gun here versus there, could there be assembling,
23 could they, you know, could a licensing officer require a
24 fingernail test, that's in their brief, all of this is the
25 point of the difference between a facial and an as-applied

1 challenge. There are going to be enforcement decisions that
2 are made about whether and how to enforce this statute and
3 whether and how to do that in a reasonable way or in a
4 potentially unconstitutional way, and part of the reason we
5 have as-applied challenges rather than facial challenges is
6 so that courts adjudicate the statute as it actually is, and
7 not as we lawyers put in our hypotheticals. And because
8 there is a plainly legitimate sweep to these statutes because
9 they are grounded in American history and doctrine, we ask
10 that the injunction be denied. Thank you, your Honor.

11 THE COURT: Thank you. Okay. That will conclude
12 our hearing. And I'm assuming, plaintiff's counsel, that
13 based on our earlier discussions and your argument, you no
14 longer are requesting the appearance of Superintendent Bruen?

15 MR. STAMBOULIEH: That's correct, your Honor.

16 THE COURT: Okay. All right. So then we'll take
17 what we have and we'll get a decision out to you. Okay.

18 MR. STAMBOULIEH: Thank you, your Honor.

19 MR. THOMPSON: Thank you, your Honor.

20 THE COURT: Thank you. Have a good day.

21 THE CLERK: Court's adjourned.

22 (Court Adjourned, 12:24 p.m.)
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/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter